

**Letter of Findings: 02-20130296P**  
**Penalties**  
**For Tax Year 2012**

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**ISSUE**

**I. Tax Administration – Underpayment and Negligence Penalties.**

**Authority:** IC § 6-3-4-4.1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the penalties.

**STATEMENT OF FACTS**

Taxpayer is an Indiana company. In 2013, Taxpayer's accountant, on behalf of Taxpayer, timely filed the corporate income tax, IT-20 form, for the 2012 tax year.

The Indiana Department of Revenue ("Department") processed the 2012 return and determined that Taxpayer failed to withhold sufficient amount of estimated tax and to pay the full amount of income tax owed. As a result, the Department issued two (2) notices of proposed assessment, imposing additional tax, interest, underpayment penalty and negligence penalty.

Taxpayer protested the penalties. A phone hearing was conducted. This Letter of Findings results and is based on the information within Taxpayer's protest file and the Department's records. Further facts will be supplied as required.

**I. Tax Administration – Underpayment and Negligence Penalties.**

**DISCUSSION**

The Department imposed penalties for the tax period in question.

Taxpayer disagreed and stated that its accountant had filed the corporate income tax, IT-20 forms, for previous tax years. In one of the previous year returns, Taxpayer's accountant elected to have the overpayment "applied to the following year's estimated tax account," but the Department issued a refund to Taxpayer instead without informing the accountant. Taxpayer further explained that its accountant calculated the estimated tax and filed the return based on the assumption that the previous overpayment was applied as credit for the following year. As a result, the accountant was not able to properly withhold the estimated tax and to file the income tax return for 2012 tax year.

**A. Underpayment Penalty.**

The Department imposed an underpayment penalty because Taxpayer failed to timely remit its estimated payments of adjusted gross income tax under IC § 6-3-4-4.1(d).

IC § 6-3-4-4.1(d) states:

The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25 [percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25 [percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

Taxpayer has provided sufficient documentation demonstrating that the imposition of the underpayment is not appropriate. Thus, Taxpayer's protest of the imposition of underpayment penalty is sustained.

**B. Negligence Penalty.**

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2\(b\)](#) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a

taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a penalty as provided in [45 IAC 15-11-2\(c\)](#), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Upon review, Taxpayer has provided sufficient documentation to demonstrate that it had reasonable cause for penalty abatement. Thus, Taxpayer's protest of the imposition of negligence penalty is sustained.

**FINDING**

Taxpayer's protest of the imposition of both penalties is sustained.

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